IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No. 206 of 2000

Reserved on : 27.6.2007

Date of Decision : August 21st, 2007

HPSEB & Others …Appellants.

Versus:

Kamla Devi and others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellants : Mr. Shrawan Dogra, Advocate.

For the respondents: Mr. Y. P. S. Dhaulta, Advocate.

Sanjay Karol, J.

The appellants have assailed the judgment and decree dated 18.5.2000 passed by learned Addl. District Judge, Mandi, H.P., titled as Kamla Devi and others vs. HPSEB and others, whereby a decree for a sum of Rs.1,61,800/- along with proportionate cost and pendente lite and future interest @ 12% per annum, has been passed.

For the purpose of convenience, the parties hereinafter are referred to as the 'respondents/plaintiffs' and the 'appellants/defendants'.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Plaintiffs filed a suit, inter alia, stating that late Shri Dile Ram posted as JBT Teacher in the Govt. Primary School,Deori in Tehsil Sadar, H. P. drawing a salary of Rs.3,500/- per month, died due to electrocution on a public path. On the night intervening 8th & 9th May, 1994, due to heavy storm with the falling of a tree, live electric wires of L.T. line broke and fell down touching the earth. On 9th May, 1994 at about 6 A. M., Shri Dile Ram was going to school when he was trapped by the current spread on the earth, upto a sufficient distance, as a result of live wires touching the earth and was electrocuted within no time and died on the spot. The matter was reported to the police and legal proceedings were initiated.

Shri Dile Ram, aged 28 years, was the only earning member in the family. He is survived by his wife Kamla Devi, three minor daughters and one minor son. The death occurred due to sheer negligence attributable to the officials of the defendants, who despite having full knowledge of loosening and felling of live wires from the poles which touched the earth failed to either remove those live wires from the public path or disconnect the electric current. Legal notice dated 8.7.1994 was served upon the defendants to pay compensation but without any response.

The claim of the plaintiffs was resisted on the ground that on the night intervening 8th & 9th May, 1994, due to heavy storm, L.T. line span had broken upto dead pole due to falling of a large pine tree in the storm and striking with the system. No

complaint regarding failure of electricity supply was reported prior to 7 A.M., 9.5.1994. That Shri Dile Ram died due to electrocution is denied as would be evident from the post mortem report which indicates the cause of death as blocking of heart and no burns on the dead body of the deceased.

On the pleadings of the parties, the following issues were framed:-

"1. Whether late Shri Dile Ram died due to electrocution on 9.5.1994 as alleged? …..OPP

2. Whether the plaintiffs are legal heirs of deceased Dile Ram? …….OPP

3. Whether the plaintiffs are entitled to the damages from the defendants on account of electrocution of Dile Ram, as alleged, if so to what amount? …….OPP

4. Whether death of deceased Dile Ram is an act of God as alleged, if so to what effect? …OPD

5. Whether the plaintiffs have no cause of action? …..OPD

6. Relief."

In support of their claim, plaintiffs examined seven witnesses and the defendants examined one witness. The Court below answered issues No. 1, 2 & 3 in favour of the plaintiffs and issue No.4 in favour of the defendants.

Point for determination before this Court is as to whether Shri Dile Ram died due to electrocution, as a result of negligence on the part of the defendants as has been held by the trial Court.

In the written statement, the defendants have admitted that in the night intervening 8th and 9th May, 1994 due to heavy wind storm, L.T. line span had broken upto dead pole due to falling of a large pine tree with the system and the officials of the Board were informed about the same only at about 7 A.M. on 9.5.1994 by Shri Padam Singh of village Sapechi. On receiving the said information, the staff on duty switched off the supply from Sambal Sub-Station and disconnected the jumper from tapping pole of Bahali-dhar to avoid any mishappening or accident. The defendants own witness Shri K. K. Thakur, J.E. HPSEB, (RW-1) has deposed that pine tree had fallen on LT line and the power supply stood disconnected and the said LT wires were hanging upto a height of 5 to 6 feet from the ground level. On being informed about the death of Shri Dile Ram, he had visited his house but did not find any mark of electrocution on his dead body. He also visited the spot of accident and in his view Shri Dile Ram could not have come in contact with the live LT line. Importantly, in cross-examination, he has admitted that on 8th May, 1994 in the evening, there was storm and the entire power supply throughout District Mandi including the place of accident, stood disrupted. According to him, the power supply was restored at about 9 P.M. on 8.5.1994 and before resuming the said power supply, he did not check breaking down of electric wires in Pandoh area which includes the place of accident. He was informed by Rikhi Ram, Lineman, that the power supply, not

only of village Sapechi where the accident took place but also of 2-3 other villages, had broken down as a result of the storm. Shri Rikhi Ram had informed him that one person had died as a result of electrocution in village Sapechi and the power supply of this village is controlled from the Sub-Station at Pandoh, to which place, he had switched on the power supply in the evening of 8.5.1994. He has admitted that the Assistant Engineer and he had conducted an inquiry and statements of the witnesses including the wife of the deceased and other villagers had been recorded.

Importantly, the inquiry report has been concealed by the State and not brought on record.

From the statement of Shri K. K. Thakur (RW-1), it is clear that there was disruption of power supply and some LT wires had been hanging above the ground level.

Dr. Surinder Singh (PW-1) who has conducted the post mortem has stated that it is possible that bruise on the body of the deceased could have been caused due to the striking of live electric wire. He has opined that it is not necessary that the burn marks have to be found in every case of electrocution. He has deposed that in the post mortem report, it is mentioned that there was entry and exit point of electric current.

Smt. Kamla Devi (PW-4) has deposed that on 8.5.1994 in the evening there was a storm due to which property had been damaged. She has deposed that her husband had died due to the electrocution as pleaded in the suit.

Smt. Guddi Devi (PW-6) has deposed that just about 15 to 20 ft. away from her house, live electric wire had come in contact with the earth and the deceased was electrocuted and died due to the same. She had heard the cries of Shri Dile Ram and in turn, she shouted for the other occupants of the house. She has deposed that due to the storm, the electric current was coming off and on.

From the statement of the witness, it is thus clear that from the verandah of her house, which is situated at a distance of 15 to 20 ft. away from the place of accident, she heard cries of Shri Dile Ram who died due to electrocution and she called the family members, who immediately reached the spot.

In the storm which came in the evening of 8.5.1994, a pine tree had fallen down resulting into breaking of live wires which were touching the ground surface and creating an electric field at the passage from where Shri Dile Ram was passing by. It is evident that defendants restored the electricity supply for the area in question without checking whether any damage and to what extent had been caused due to the storm.

Shri Bhup Singh (PW-7) has also deposed that the deceased died on 9.5.1994 at about 6 A.M. due to electrocution. Shri Balwant Singh (PW-3) has deposed that an FIR had been registered against the defendant with respect to the said accident. The post mortem report Ext.PA and the FIR Ext.PD have been placed on record. The witnesses have also proved the

copy of legal notice dated 8.7.1994 served by the plaintiffs and most importantly the letter Ext.PK written by the Executive Engineer, HPSEB, Gohar, Distt. Mandi, asking the plaintiffs to visit his office to discuss the affair in relation to the accident in question to enable him to take necessary action in the matter.

The fact that Shri Dile Ram died due to electrocution is thus evident from the statements of PW-6 & PW-7 as also RW-1 who has stated that the Lineman Rikhi Ram had informed him of the death of the deceased due to electrocution. Not only that the witnesses had visited the house of the deceased, and had infact written to the plaintiffs asking them to come and discuss the issue with them. If no death had taken place due to electrocution, then what was the occasion for the defendants to have taken all such steps. Therefore, in my view, it has been proved on record that Shri Dile Ram died due to electrocution.

It has already come on record through the statements of PW-1, PW-6 & PW-7 that in the evening of 8.5.1994, due to heavy storm, property has been damaged. The defendants were duty bound to have checked the lines before restoring the electricity supply which admittedly was not done. Therefore, the defendants were negligent in maintaining the electricity supply.

That the deceased was survived by his wife and minor children, has already been proved on record. It has been proved on record that the deceased was working as a JBT

teacher in the Education Department of the State and was drawing a salary of Rs.3500/- per month.

In my view, the Court below has rightly come to the conclusion that the compensation payable to the plaintiffs, by applying a multiplier of 12, as the deceased was 28 years of age, would be Rs.1,61,800/- after deducting the payments already received.

For all the aforesaid reasons, the appeal is accordingly dismissed.

(Sanjay Karol),
Judge.

August 21st, 2007
(*rana*)